



Morris K. Udall Foundation

CIVILITY, INTEGRITY, CONSENSUS

performance and accountability **report** for fiscal year  
 **2004**

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## FY 2004 Performance and Accountability Report January 2005

I am very pleased to report on behalf of the Board of Trustees that both the Foundation's management performance and financial health are exemplary. Not only has the Foundation met the established goals for its Education Programs and Environmental Conflict Resolution Programs, it has done so while lowering the net cost of operations.

In addition, I am pleased to report that the Foundation received an unqualified ("clean") opinion for FY 2004 and that no material inadequacies were identified by the independent auditor. This opinion assures Congress, the general public and others that the financial statements contained in this report accurately reflect the financial health of the Foundation.

The Board extends its thanks to those who have provided support to the Foundation and believes this performance and accountability report justifies the continued support of our operations.

A handwritten signature in black ink, reading "Terrence L. Bracy". The signature is fluid and cursive, with a long horizontal line extending from the top of the first letter.

Terrence L. Bracy  
Chairman of the Board



## FY 2004 Performance and Accountability Report January 2005

FY 2004 was an extraordinary year for the Morris K. Udall Foundation. The Foundation was able to achieve, or exceed, all of the programmatic goals established for that year, while also decreasing the net cost of operations. Needless to say, the Foundation's management team is extremely pleased with the performance of its staff.

I am also pleased to note that the Foundation received an unqualified ("clean") opinion for FY 2004 and that no material inadequacies were identified by the independent auditor. This excellent result assures the public that the financial information presented is accurate and reliable.

I am also pleased to report that the necessary management controls are in place. The audit did find one area for improvement in the way that the annual financial information is prepared by the U.S. General Services Administration, which provides essential financial services to the Foundation. The Foundation and GSA have already discussed the recommendation and will work cooperatively on this issue.

Christopher L. Helms  
Executive Director



## FY 2004 Performance and Accountability Report January 2005

The Morris K. Udall Foundation received unqualified (“clean”) opinions for both the FY 2003 Balance Sheet audit and the FY 2004 audit. Both audits find no material weaknesses.

The independent auditors had one finding for FY 2004: The annual financial statements prepared by the U.S. General Services Administration (GSA) omit some year-end adjustments necessary to comply with accrual-based accounting. The Foundation has already discussed this finding with GSA and we are confident that improved coordination will substantially address or eliminate this finding in the next fiscal year.

Philip J. Lemanski  
Chief Operating Officer  
and Director of Education Programs

# Management Discussion and Analysis

## Mission and Organizational Structure

### THE MORRIS K. UDALL FOUNDATION

#### Mission

In 1992, Congress created the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation. The law creating the Foundation is part of the U.S. Code, at 20 U.S.C. Section 5601.

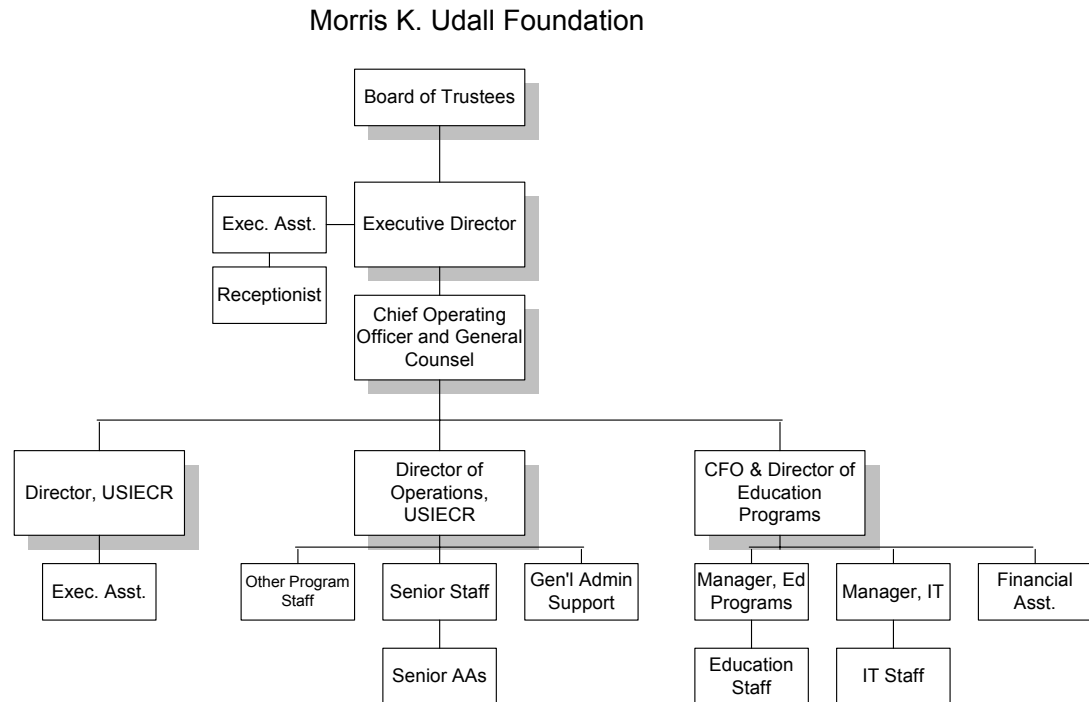
The law gives governing authority for the Foundation to a Board of Trustees, appointed by the President with the advice and consent of the U.S. Senate.

The purposes, as set forth in the law, of the Morris K. Udall Foundation are to:

- increase the awareness of the importance of and promote the benefit and enjoyment of the nation's natural resources.
- foster a greater recognition and understanding of the role of the environment, public lands and resources in the development of the U.S.
- identify critical environmental issues.
- develop resources to properly train professionals in the environmental and related fields.
- provide educational outreach regarding environmental policy.
- develop resources to properly train Native American and Alaska Native professionals in health care and public policy, by conducting management and leadership training of Native Americans, Alaska Natives, and others involved in tribal leadership, providing assistance and resources for policy analysis, and carrying out other appropriate activities.

- establish the U.S. Institute for Environmental Conflict Resolution to assist the federal government in implementing section 101 of NEPA by providing assessment, mediation, and other related services to resolve environmental disputes involving federal agencies.

Shown below is the current organizational chart for the agency.



## Organizational Structure

The Foundation is organized into two distinct program areas: education programs and the U.S. Institute for Environmental Conflict Resolution. In FY2004, the Foundation had 27 FTEs, all based in Tucson.

## Education Programs

The Foundation is authorized to award scholarships, fellowships, internships and grants for educational purposes. The specific areas permitted by the law are:

Scholarships for college undergraduates in two areas – 1) to those who intend to pursue careers related to the environment and 2) Native Americans and Alaska Natives who intend to pursue careers in health care and tribal public policy.

Internships, including awards to Native American and Alaska Native individuals participating in internships in federal, state and local agencies or in offices of major public health or public policy organizations.

Fellowships to graduate students pursuing advanced degrees in fields related to the environment and/or to Native American and Alaska Native graduate students in health care and tribal public policy, including law and medicine.

Grants to the Udall Center for Studies in Public Policy at the University of Arizona, for various purposes including research on environmental policy, Native American and Alaska Native health care issues and tribal public policy issues.

All of the above education programs are funded by the annual income from the Trust Fund. The annual income is specifically allocated by the law, as follows: at least 50 percent for scholarships, internships and fellowships; at least 20 percent for grants to the Udall Center; and a maximum of 15 percent for administrative costs. Parks in Focus and other activities are funded from the remaining 15 percent of Trust Fund income.

### **Native Nations Institute**

One of the Foundation's purposes is to develop resources to properly train Native American and Alaska Native professionals in health care and public policy by developing management and leadership training of those involved in tribal leadership and providing assistance and resources for policy analysis.

In connection with this purpose, the Udall Foundation co-founded the Native Nations Institute for Leadership Management and Policy with the University of Arizona in 2000. NNI provides executive management and leadership training to tribal leaders, as well as policy analysis. Congress authorized \$12.3 million in appropriations for NNI for fiscal years 2001 through 2005 but to date has not made new appropriations. Instead, Congress authorized the Udall Foundation to transfer a portion of its Trust Fund appropriations in each of fiscal years 2001 through 2004. The Foundation has transferred a total of \$2.25 million over that period to NNI.

The U.S. Institute for Environmental Conflict Resolution  
In 1998, Congress authorized the Udall Foundation to establish the U.S. Institute for Environmental Conflict Resolution to provide assessment, mediation and other related services to resolve environmental disputes involving the federal government. Congress has provided annual operating appropriations for the U.S. Institute every year since fiscal 1999.



## **Performance Goals, Objectives and Results**

### **Performance Goals**

The Foundation's FY 2004 performance goals, linked to the Foundation's six strategic goals, are in two general areas: 1) education programs related to the environment and to Native Americans, and 2) environmental conflict resolution services and programs.

The six strategic goals are:

1. Increase understanding and appreciation of the environment, environmental policy, natural resources and public lands through scholarships, fellowships and internships.
2. Increase educational opportunities for Native Americans and Alaska Natives in health care and public policy.
3. Resolve environmental conflicts and improve environmental decision-making by increasing the reach and effectiveness of U.S. Institute services.
4. Increase the capacity of agencies and other affected stakeholders and practitioners to manage and resolve conflicts using ECR.
5. Provide leadership within the federal government to improve environmental decision-making and policies through ECR.
6. Effective internal management and fiscal responsibility.

## **Performance Results**

### **Education Activities**

The Foundation enabling legislation specifically authorizes scholarships, fellowships, internships and grants in the areas of the environment and Native American health or tribal policy. In order to achieve its strategic educational goals (Goals 1 and 2), the Foundation set FY 2004 objectives, all of which were met:

- Up to 80 scholarships of \$5,000 each and two dissertation fellowships at \$24,000 each
- 90% satisfaction rate from scholars and fellows with regard to program activities
- 12 Native American Congressional internships filled with high-quality participants

In order to reach these goals, Foundation staff members establish relationships with faculty representatives at colleges and universities and with tribes and tribal colleges. Outreach is conducted to more than 2,700 colleges and universities. Smaller numbers of colleges and tribal organizations are targeted for personal staff contact to ensure 500 scholarship nominations from colleges, up to 40 fellowship applicants, and up to 45 Native American internship applications. Pursuant to the enabling legislation, no less than 50% of the Trust Fund revenue each year must be used to fund the education programs; the bulk of that goes directly to scholarships and fellowships and a lesser amount to program activities (e.g., outreach, scholar orientation).

In addition, the Foundation is required by law to provide 20% of its annual budget for Trust Fund programs to the Udall Center for Studies in Public Policy at the University of Arizona. The law authorizes such funding for various activities, including Udall Archives at the university library, environmental policy and conflict resolution activities, and an annual conference, and these activities are described in an annual workplan submitted by the Udall Center to the Foundation.

### **Environmental conflict resolution activities**

FY 2004 objectives for environmental conflict resolution activities (Strategic Goals 3, 4 and 5) focused on:

- Resolving environmental conflicts and improve decision-making through U.S. Institute services

The use of evaluation instruments was initiated in FY 2003 to begin obtaining results on outcomes and satisfaction. The still-limited data in FY 2004 indicated a positive result. For conflict assessments, the goal was that in 85% of projects, the initiating organizations agreed the recommended conflict resolution approaches were appropriate for addressing the conflicts; the result was 100% in the 23 assessments conducted. In addition, for 85% of mediations/facilitations, the parties indicated they reached full or partial

agreement or narrowed the issues and set the stage for resolving the conflicts through additional processes; this result met the goal.

- Increasing capacity of stakeholders to resolve and manage conflicts

The agency targeted increases in dispute system designs and interagency service agreements (for a wide range of Institute services). The targets were exceeded in FY 2004, with seven actual dispute system designs and 15 service agreements. In addition, the evaluation program's data showed increased capacity of stakeholders to participate in ECR processes, with 85% of those responding indicating an increased capacity to manage and resolve future challenges/conflicts as a result of informal training provided during processes, and for 100% of formal trainings, the respondents indicating they gained knowledge and skills to assist them in participating in ECR processes.

- Leadership within the federal government

Three major activities were undertaken in connection with this goal, and objectives were generally met. The U.S. Institute has facilitated an Interagency Initiative to Foster Collaborative Problem Solving and Environmental Conflict Resolution in conjunction with the White House Council on Environmental Quality and developed principles for agency engagement in collaborative problem-solving; it has led quarterly ECR Roundtable discussions involving agency ADR officials from throughout the federal government; and it has worked with its National ECR Advisory Committee, which is developing recommendations regarding use of collaborative processes to enhance implementation of Section 101 of the National Environmental Policy Act.

The most significant overall limitations on the agency's ability to reach goals are funding-related, including the ability of other agencies to reimburse the U.S. Institute for its services and the level of the U.S. Institute's appropriations.

## **Analysis of Financial Statements and Stewardship Information**

### **Introduction and Analysis of Statements**

The Federal Accounting Standards Advisory Board requires that the agency's financial statement reports be displayed in several formats. The annual financial statements include a Balance Sheet, Statement of Net Cost, Statement of Changes in Net Position, Statement of Budgetary Resources, Statement of Financing, and related notes. The statements are in addition to

the internal financial reports to management which are prepared from the same data.

The statements combine data for both the Trust Fund and the U.S. Institute for Environmental Conflict Resolution (USIECR), however, the Trust Fund and USIECR receive separate appropriations, and the appropriations are deposited into separate funds. Although both funds invest available balances in Treasury obligations, they differ in how they may be spent: USIECR's appropriations remain available until expended and are used for annual operations; the appropriations for the Trust Fund are added to principal and invested, and only the income may be used to fund the Foundation's educational programs.

Public Law 102-259 authorized appropriations of \$40 million for the Foundation Trust Fund. The initial appropriation in 1994 was approximately \$19.9 million; from FY 1998 through FY 2004, Congress appropriated another \$11.7 million, for a total appropriation to date of approximately \$31.6 million. The Trust Fund is invested by law in Treasury obligations.

As mentioned earlier, the USIECR has received annual operating appropriations of approximately \$1.3 million since inception (FY 1999). USIECR also received a one-time start-up appropriation of \$3 million.

### **Balance Sheet**

The Balance Sheet provides a "snapshot" of the Foundation's financial condition as of the end of the fiscal year. The Assets category includes both long-term investments and balances with Treasury that are invested on a monthly basis.

### **Balance Increases**

Overall, assets grew by approximately 4%, while liabilities decreased by approximately 21%. Most of the decrease in liabilities was due to a decrease in accounts payable.

The vast majority of the Total Assets shown on the balance sheet are Trust Fund investments, both short and long term. Because annual appropriations (\$1.996 million less a rescission of approximately \$11,776 in FY04) to the Trust Fund may not be spent, but must be invested, these appropriations increased the fund balance in FY 2004.

Since USIECR has not spent all of its one-time appropriation, the balance is invested on a monthly basis and therefore included in assets. In addition, the Institute is authorized to collect and retain fees from federal agencies for its

work. All available balances are invested monthly. As noted in the next section, a substantial increase in fees resulted in a small annual surplus that increased the fund balance.

### **Statement of Net Cost**

The statement displays the respective total expenses, net of earned revenues. Overall, the net cost of operations decreased 25% in FY 2004. The decrease resulted from the tripling of the Institute's earned revenue to \$3.7 million. Revenues include funds received by the Foundation in a grant from the Hewlett Foundation for work in connection with the U.S. Institute's evaluation program.

The cost of the Education Programs increased due to an increase in the transfers to the Native Nations Institute and allocations to the Institute for expenses related to executing the Hewlett Foundation grant.

Of the total Trust Fund budget, more than 85% of total expenses were related to Education Programs. Of the Institute's budget, 42% was for operations and 58% was for project and program development costs.

### **Statement of Changes in Net Position**

Overall, the ending balances increased in FY 2004 by approximately 5%. Appropriations to the Trust Fund and the Institute were the same as the previous year. Trust Fund interest increased in FY2004 (as a result of investing maturing short-term obligations in long-term obligations), which partially offset the increase in net cost of operations as explained above. For the Institute, net cost of operations improved in FY 2004, contributing to the higher ending balances.

### **Statement of Budgetary Resources**

The statement provides information to help assess budget execution and compliance with budgetary accounting rules. This statement provides information on total budgetary resources available, the status of those resources, and outlays. This statement is prepared on an "obligation" basis as opposed to the accrual basis of accounting for most other statements. As stated previously, earned revenue reduced overall outlays, resulting in a decrease of 16%.

### **Combined Statement of Financing**

This statement shows the relationship of budgetary obligations (Statement of Budgetary Resources) to costs recorded in the Statement of Net Cost. As indicated above, the increase in offsetting receipts resulted in a reduction in the net cost of operations.

## **Controls, Systems, and Legal Compliance**

### **Financial Audit**

The Foundation had its first independent audit of all financial statements in FY 2004 (the FY 2003 audit was for the Balance Sheet only). The audit provides additional assurance to its constituents, to Congress, and to the Foundation's Chief Financial Officer that the Foundation's financial transactions and management practices are in keeping with established laws, regulations, and practices.

The Foundation received unqualified opinions ("clean") for both FY 2003 and FY 2004.

### **Auditor's Material Finding (FY 2004)**

The independent auditors identified no material weakness in the financial reporting during their audit for the period ending September 30, 2004.

The Federal Financial Management Improvement Act (FFMIA) of 1996 requires auditors to report on whether agencies' financial management systems substantially comply with the Federal financial management systems requirements, applicable Federal accounting standards, and the United States Government Standard General Ledger at the transaction level.

The auditors have reported that their tests disclosed instances where the Foundation's financial management systems did not substantially comply with requirements stated in the preceding paragraph.

### **Condition**

As noted in the Management's Response, the U.S. General Services Administration's (GSA) Finance Center performs necessary payroll and financial services for the Foundation. As such, the audit considers GSA to be part of the Foundation's management.

The audit found one area for improvement. The GSA-produced financial statements do not include certain adjustments necessary for accrual-based accounting.

### **Corrective Actions**

As noted in the Management's Response, the Foundation is a small client of GSA and has no direct influence on its policies and procedures. The Foundation is working with GSA to determine whether its accounting systems can provide all or most of the accrual-based accounting adjustments during the year so that the final statements will include these adjustments. If GSA can include the adjustments, it will not be necessary for the auditors to make

the adjustments outside of the financial system. Management continues to talk with GSA to determine when and how these improvements can be made.

## **Possible Future Effects of Existing Events and Conditions**

### **Future Effects and Trend Data**

Since most of the Trust Fund balance is invested in long-term obligations, short-term fluctuations in interest rates are not a major factor in estimating annual investment income. The current income stream is sufficient for existing programs; however, costs will continue to escalate due to inflation. If the Trust Fund does not receive annual appropriations to offset rising costs, Education Programs could suffer (as noted earlier, by law 85% of income is allocated to programs).

Although the Institute charges fees for all ECR cases and projects that develop beyond the initial consultation stage, it relies upon a baseline appropriation to support its operations. Since the Institute has a statutory obligation to use the services of neutrals in the geographic area of the dispute, and because use of contracted service providers leverages the effort of the small staff and enables the Institute to work on a far larger number of cases and projects, the majority of project revenue, approximately 70%, passes through to contracted neutrals. The portion retained is not sufficient to maintain operations.

There are, therefore, two unknowns that could adversely affect operations – a significant reduction of its baseline appropriation or a sharp reduction in fees due to the inability of agencies to pay. If agency budgets are significantly reduced, many may opt to utilize available dollars for non-environmental conflict resolution work.

### **Limitations of the Financial Statements**

The enclosed principal financial statements have been prepared to report the financial position and results of operations of the Foundation, as required by 31 U.S.C. 3515(b). The statements have been prepared from the books and records of the Foundation in accordance with generally accepted accounting principles (GAAP) for Federal entities and the formats prescribed by the Office of Management and Budget. These financial statements are in addition to other financial reports used to monitor and control budgetary resources that are also prepared from the same books and records.

The statements should be read with the realization that they are for a component of the U.S. Government, a sovereign entity. One implication of this is that liabilities cannot be liquidated without legislation that provides resources to do so.



## **FY 2004 Performance Results**

The Foundation was not subject to the PAR reporting requirements until FY 2004 and does not have complete performance information for years prior to FY 2003. Therefore, performance data was reported only for FY 2003 and FY2004. Additionally, at the time of development of the FY 2005 Performance Plan, the Foundation revised a number of its annual performance goals to more appropriately focus on outcomes rather than activities. As a result, the FY 2004 performance goals have been reframed to fit the new framework. The results reported here are in keeping with the improved, outcome-focused annual goals for Foundation programs.

### **Education Programs**

The Foundation is authorized to award scholarships, fellowships, internships and grants for educational purposes. The specific areas permitted by the law are:

Scholarships for college undergraduates in two areas – 1) to those who intend to pursue careers related to the environment and 2) Native Americans and Alaska Natives who intend to pursue careers in health care and tribal public policy.

Internships, including awards to Native American and Alaska Native individuals participating in internships in federal, state and local agencies or in offices of major public health or public policy organizations.

Fellowships to graduate students pursuing advanced degrees in fields related to the environment and/or to Native American and Alaska Native graduate students in health care and tribal public policy, including law and medicine.

Grants to the Udall Center for Studies in Public Policy at the University of Arizona, for various purposes including research on environmental policy, Native American and Alaska Native health care issues and tribal public policy issues.

All of the above education programs are funded by the annual income from the Trust Fund. The annual income is specifically allocated by the law, as follows: at least 50 percent for scholarships, internships and fellowships; at

least 20 percent for grants to the Udall Center; and a maximum of 15 percent for administrative costs.

**Strategic Goal 1: Increase understanding and appreciation of the environment, environmental policy, natural resources and public lands through scholarships, fellowships and internships.**

Activity, supporting objective, and performance measure	Summary Goal and Actual Performance
<b>Outreach</b> – <i>Maximize the opportunity for students to learn about the scholarship by increasing the number of faculty representatives.</i>	
Increase the number of Colleges/Universities that have faculty representatives.	FY 2003 Actual: 603 FY 2004 Goal: NA FY 2004 Actual: 655

Activity, supporting objective, and performance measure	Summary Goal and Actual Performance
<b>Scholarships</b> – <i>Provide merit-based scholarship to undergraduate students who intend to pursue careers related to the environment and Native American and Alaska Native students who intend to pursue careers in health care and tribal public policy.</i>	
Fund 80 scholarships (@ \$5,000 each), 50 honorable mention awards of \$350 each, and two dissertation fellows (@ \$24,000 each).	FY 2003 Actual: 80, 30, 2 FY 2004 Goal: 80, 50, 2 FY 2004 Actual: 80, 50, 2

Activity, supporting objective, and performance measure	Summary Goal and Actual Performance
<b>Alumni satisfaction</b> – <i>Ensure quality program activities, administration and contact.</i>	
Achieve 90% satisfaction rate from scholars and fellows with regard to respective program activities, administration and interactions with Foundation.	FY 2003 Goal: N/A FY 2004 Goal: 90% FY 2004 Actual: 90%

Activity, supporting objective, and performance measure	Summary Goal and Actual Performance
<b>Parks in Focus</b> – <i>Provide opportunity for disadvantaged youth, ages 9 – 12, to develop an appreciation for the environment and natural resources through the art of photography during outings in national parks and other natural areas.</i>	
Fund program for 12 students.	FY 2003 Actual: 12 FY 2004 Goal: 12 FY 2004 Actual: 12

Activity, supporting objective, and performance measure	Summary Goal and Actual Performance
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<b>Fellowships</b> – <i>Track whether fellowship recipients continue to careers related to the environment.</i>	
Increase response rates from past fellowship recipients regarding whether they continue in careers related to the environment.	FY003 Actual: 80% FY 2004 Goal: NA FY 2004 Actual: 85%

## Strategic Goal 2: Increase educational opportunities for Native Americans and Alaska Natives in health care and public policy.

Activity, supporting objective, and performance measure	Summary Goal and Actual Performance
<b>Native American Internship</b> – <i>Provide opportunity for highly qualified Native American and Alaska Native students to gain practical experience in the federal legislative process, congressional matters, and governmental proceedings.</i>	
Place 12 Native American interns in congressional offices and agencies that provide a comprehensive legislative experience to the interns.	FY 2003 Actual: 12 FY 2004 Goal: 12 FY 2004 Actual: 12

Activity, supporting objective, and performance measure	Summary Goal and Actual Performance
<b>Alumni satisfaction</b> – <i>Ensure quality program activities, administration and contact.</i>	
Increase satisfaction rate from interns with regard to program activities, administration and interactions with Foundation.	FY2003 Actual: 67% FY 2004 Goal: 90% FY 2004 Actual: > 90%

Activity, supporting objective, and performance measure	Summary Goal and Actual Performance
<b>Native Nations Institute</b> – <i>Provide funding for NNI to conduct executive education for Native American tribes</i>	
Native Nations Institute executive education program continues to be operational.	FY2003 Actual: operational FY 2004 Goal: operational FY 2004 Actual: operational

## U.S. Institute for Environmental Conflict Resolution

### Overview

The U.S. Institute for Environmental Conflict Resolution (U.S. Institute) was established to assist in the resolution of environmental conflicts involving federal agencies or interests by providing mediation, facilitation and other related services. The U.S. Institute strives to fulfill that mission by

increasing the appropriate use and effectiveness of its own services and the capability of agencies and other stakeholders to use environmental conflict resolution (ECR) processes.

The U.S. Institute is guided by three strategic goals:

Strategic Goal 3: Resolve environmental conflicts and improve environmental decision-making by increasing the reach and effectiveness of U.S. Institute services.

Strategic Goal 4: Increase the capacity of agencies and other affected stakeholders and practitioners to manage and resolve conflicts using ECR.

Strategic Goal 5: Provide leadership within the federal government to improve environmental decision-making and policies through ECR.

As this progress report demonstrates, the U.S. Institute set very high standards for itself in 2004 and has successfully met or exceeded many of its targets. This is the first time the U.S. Institute has been able to effectively measure actual performance elements. Projected standards were unproven. The results confirm that these targets are approachable and achievable.

Strategic Goal 3: Resolve environmental conflicts and improve environmental decision-making by increasing the reach and effectiveness of U.S. Institute services.

As an independent, impartial institution within the federal government, the U.S. Institute provides a range of services that collectively increase the appropriate and effective use of ECR. The services include case consultations, conflict assessments, mediations and facilitations, and the recruitment, screening and placement of qualified practitioners for cases managed outside of the U.S. Institute.

The U.S. Institute's FY 2004 key activities/services, supporting objectives and performance measures pertaining to strategic goal 3 are detailed below:

Activity, supporting objective, and performance measure	Summary Goal and Actual Performance
<b>Case Consultations<sup>1</sup></b> – <i>Assist stakeholders to make informed decisions on whether to pursue ECR as a viable alternative for resolving disputes.</i>	

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<sup>1</sup> Consultation services range from extensive discussions of specific conflicts to long-term, multiple-contact mentoring and guidance to stakeholders.

Increase to 50 the number of case consultations provided to counsel stakeholders on whether cases are appropriate for dispute resolution processes.	FY 2003 Actual: 26 FY 2004 Goal: 50 FY 2004 Actual: 73
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The U.S. Institute continues to serve as a central source for agencies seeking conflict resolution services. By providing professional screening and triage for all inquiries and extended consultations as needed, the U.S. Institute staff learn enough about the disputes and the stakeholders to counsel on whether the cases were appropriate for dispute resolution processes. Providing professional screening and triage is an important first step to assisting the federal agencies in resolving environmental disputes.

During FY 2004, the U.S. Institute provided 73 consultations. The following selected consultations illustrate the diverse nature and significance of current screening and triage work being conducted by U.S. Institute staff.

#### Washington I-90 Snoqualmie Consultation

The U.S. Forest Service, the Washington Department of Transportation and the Washington Division of the Federal Highway Administration disagree over proposed expansion of I-90 over the Snoqualmie pass in Washington. Part of the problem has been who has jurisdiction for transportation projects on federal land. During FY 2004, the U.S. Institute staff provided consultation services to explore resolving this issue.

#### EPA Region 6 Traditional Tribal Dispute Resolution Methods Consultation

During FY 2004, the U.S. Institute staff provided consultation services to the Environmental Protection Agency (EPA) concerning the feasibility of conducting a needs assessment of 66 EPA Region 6 tribes regarding traditional dispute resolution methods and communication challenges with EPA Region 6 staff.

Activity, supporting objective, and performance measure	Summary Goal and Actual Performance
<b>Conflict Assessments</b> – <i>Assess the nature of disputes and determine if and how collaborative processes can be used to resolve environmental conflicts.</i>	
For 85% of assessments conducted through the U.S. Institute, the representatives of the organizations initiating the assessments agree that the recommendations (i.e., whether or not to proceed with a collaborative approach and, if so, how) are appropriate for addressing the conflicts.	FY 2003 Actual: 78% FY 2004 Goal: 85% <sup>2</sup> FY 2004 Actual: 100%

<sup>2</sup> The level of achievement represents the percent of case-level scores above the midpoint of 5 on a "0" to "10" scale. For example, if 85% of cases are reported to have achieved some attribute, this means that in 85% of cases the average respondent score for that attribute was above 5.

During FY 2004, the U.S. Institute was involved in 24 conflict assessment processes (Appendix A). For all of the assessments completed and evaluated during FY 2004, the representatives of the organizations initiating the assessments reported that the recommended collaborative approaches were appropriate means of addressing the conflicts.

The following selected projects illustrate the diverse nature and significance of current assessment work being conducted through the U.S. Institute.

#### Grand Canyon Overflight Noise Controversy (Arizona)

The U.S. Institute has conducted an initial assessment of the potential for a collaborative interagency resolution of over-flight noise issues at the Grand Canyon. In 1987, Congress directed the National Park Service and the Federal Aviation Administration to work together to reduce noise from air tour aircraft over Grand Canyon National Park and to “substantially restore natural quiet.” Despite some improvements resulting from designation of specific air tour routes and limits on the number of flights, the Park Service and FAA acknowledge that the congressional directive has yet to be achieved. The agencies have had ongoing difficulties reconciling their respective jurisdictions over the issues and about how to restore “natural quiet.” The U.S. Institute has conducted an initial assessment with the agencies and begun the mediation of preliminary interagency issues. An expanded assessment process will soon be initiated that includes other interested and affected stakeholders. If the assessment indicates that the agencies and key stakeholders are willing to participate in a good-faith effort to negotiate a collaborative solution to the over-flight noise issues, a multi-stakeholder collaborative process will be initiated.

#### Tribal Trust Asset Mediation (Oklahoma)

In FY 2003, tribal and federal parties to litigation regarding the management of tribal natural resource assets agreed to participate in an assessment of the prospects for using mediation or another form of alternative dispute resolution to assist in resolving issues related to potential legal claims by a particular tribe against the United States. Because of its standing as a neutral third party, the parties sought consultation from and agreed to contract the selected neutral through the U.S. Institute. The U.S. Institute worked closely with the contracted neutral, federal dispute resolution professionals, and other parties involved over the course of the assessment. Consequently, the parties jointly developed a process for working together to address the particular tribe’s claims. The parties agreed to use mediation should they reach an impasse in the course of addressing the tribe’s substantive claims.

Activity, supporting objective, and performance measure	Summary Goal and Actual Performance
<b>Mediation and Facilitation Processes</b> – <i>Provide collaborative agreement-seeking processes designed to help disputing stakeholders reach consensus agreement and resolution of disputes.</i>	
For 85% of environmental conflict resolution services provided through the U.S. Institute the parties reach full or partial agreement <sup>3</sup> or the parties agree that they have narrowed the number of issues and set the stage (i.e., increased their understanding of the issues, values, interests and positions of the other parties) for resolving the conflicts through subsequent processes.	FY 2003 Actual: 82% FY 2004 Goal: 85% FY 2004 Actual: 85%

During FY 2004, the U.S. Institute was involved in 42 mediation and facilitation processes (Appendix A). In the majority of mediation/facilitation cases (85%) evaluated through the U.S. Institute, the parties to these processes reached full or partial agreement. The following selected projects illustrate the diverse nature and significance of current mediation/facilitation work being conducted through the U.S. Institute.

- **Bankhead National Forest Health and Restoration Plan (Alabama)**  
This project addressed planning to sustain and restore the native forest community to the Southern Cumberland Plateau region. Management plans will ultimately be integrated into the Forest Plan revision process that is taking place for the four national forests of Alabama. The U.S. Institute conducted a conflict assessment and was involved in initial convening, facilitation and general support for a multi-stakeholder group, called the Liaison Panel, representing varied stakeholder viewpoints. The group reached agreement on a preferred alternative for the Plan in July, and is now working to define ongoing support needs, including an active monitoring and adaptive management effort. This effort was supported through The U.S. Institute's Federal Partnership Program.
- **St. Croix River Crossing (Minnesota & Wisconsin)**  
The St. Croix River Crossing case is one of the 13 high priority cases identified by the interagency task force on Environmental Stewardship and Transportation Infrastructure Project Reviews, established by Executive Order 13274. Continuing work on this case during FY 2004 focused on designing a collaborative problem-solving process to reach agreement on both a new bridge and the historic lift bridge over the St. Croix River at Stillwater, MN. Several facilitated meetings among

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<sup>3</sup> Agreements include collaborative decisions in the forms of plans, proposals, recommendations, or signed formal agreements to, for example, settle a dispute.

all the principal stakeholders have led to identifying and narrowing alternative solutions to the transportation problem. An agreement on a preferred alternative is expected by the end of the year, with the completion of the NEPA process in Spring 2005.

Activities, supporting objectives, and performance measures	Summary Goals and Actual Performance
<b>National Roster of ECR Practitioners</b> – <i>Provide all stakeholders a mechanism to efficiently identify, select, and use qualified practitioners to guide mediation and facilitation processes, thereby increasing the effective use of ECR.</i>	
Increase roster membership, focusing on recruiting qualified neutrals to strengthen balance and diversity, thereby ensuring that in 90% of roster searches a sufficient array of appropriate candidates are accessible to users.	FY 2003 Actual: NA FY 2004 Goal: 90% FY 2004 Actual: 83%
Increase to 125 the number of searches (by agency and court staff, tribes, public and other stakeholders) to locate qualified ECR practitioners using the National Roster.	FY2003 Actual: 57 FY2004 Goal: 125 FY 2004 Actual: 1104
In over 90% of ECR cases managed by the U.S. Institute, the participants report they are satisfied with the services provided by the practitioners.	FY 2003 Actual: 100% FY 2004 Goal: 90% FY 2004: Actual 100% <sup>5</sup>

The National Roster of ECR Practitioners continues to be developed as a national resource to stakeholders looking for qualified practitioners with environmental dispute resolution experience. Currently, there are 251 qualified practitioners on the U.S. Institute roster located in 41 states, the District of Columbia, and two Canadian provinces. Through an interagency agreement with the Federal Highway Administration, the U.S. Institute has assembled a sub-roster of qualified practitioners with particular experience in developing and reviewing transportation projects for assistance. The "Transportation Roster" currently includes 44 professionals.

The value of the Roster in locating qualified practitioners with environmental dispute resolution experience was confirmed with 83% of users reporting that a sufficient array of appropriate candidates were accessible through the database. The value of the Roster was also reflected in participant satisfaction ratings of the skills and practices of the third-party neutrals

4 31 external assisted referrals and 77 external unassisted roster searches/referrals.

5 Recall that the level of achievement represents the percent of case-level scores above the midpoint of 5 on a "0" to "10" scale. For example, if 85% of cases are reported to have achieved some attribute, this means that in 85% of cases the average respondent score for that attribute was above 5.



(mediators or facilitators). For FY 2004, the U.S. Institute exceeded its goal with the participants in 100% of the cases evaluated reporting satisfaction with the third-party neutrals contracted to mediate or facilitate the processes.

During FY 2004, the U.S. Institute provided 33 external assisted referrals (Appendix A), and the roster database was used for 77 searches/referrals by other agencies and users. However, referral activity did not increase as projected for FY 2004 due to delays in making the Roster's online database publicly accessible. Referrals are expected to increase considerably when the Roster's online database becomes publicly available in Fall 2004. Outreach and information pieces designed to increase awareness of public access to the Roster are currently being developed.

The following selected external assisted referrals are examples of the type of environmental collaborative problem solving and dispute resolution projects benefiting from this U.S. Institute service:

- **Water Allocation/Assessment Formula Mediation (D.C.)**  
The U.S. Department of Justice, Director of Office of Dispute Resolution and ADR Civil Division attorney sought a referral as part of their efforts in assisting the trail attorney and opposing counsel with finding an appropriate mediator. They sought referrals to roster members in the west with water allocation/use fee assessment and litigation experience. Provided case consultation/input regarding selection criteria and Profiles for four attorney and two non-attorney mediators. Roster Member Joseph McMahon was selected.
- **Dos Pobres-San Juan Tribal Consultation (AZ)**  
State BLM office sought third-party assistance in consulting with two Tribes regarding draft Record of Decision for a project that involves open pit copper mine. The mine operation relies entirely on ground water and is the issue of concern to tribes. A meeting was set three days away from the request. Provided Profiles for eight roster members with the most essential issues experience on same day turn-around. Roster member Renee Hoekstra was selected.

**Strategic Goal 4: Increase the capacity of agencies and other affected stakeholders and practitioners to manage and resolve conflicts using ECR.**

Through program development, dispute systems design, trainings, workshops, public policy dialogues and other educational initiatives, the U.S. Institute increases the capacity of stakeholders to know when and how to effectively use ECR. Capacity building initiatives target all stakeholders (i.e., federal agencies, public and private interests) and range from informal

training for process participants to multi-agency capacity building initiatives.

The U.S. Institute's FY 2004 key activities/services, supporting objectives and performance measures pertaining to strategic goal 4 are detailed below:

Activity, supporting objective, and performance measure	Summary Goal and Actual Performance
<b>Build Institutional Capacity within the Federal Government</b> – <i>Increase capacity within the Federal Government to appropriately and effectively use ECR.</i>	
Increase up to 5 the number of Program Development and Dispute System Design (DSD) <sup>6</sup> initiatives undertaken to more effectively prevent or manage recurring types or classes of environmental disputes.	FY 2003 Actual: 5 FY 2004 Goal: Up to 5 FY 2004 Actual: 7
Increase the number of service agreements and memoranda of understanding in place to 15 by FY 2004.	FY 2003 Actual: NA FY 2004 Goal: 15 FY 2004 Actual: 13

For FY 2004, the U.S. Institute exceeded its goal by working on 7 Program Development and Dispute System Design initiatives (Appendix A). The following selected projects illustrate the diverse nature and significance of current Program Development/Dispute System Design work conducted through the U.S. Institute.

- **Pilot Mediation Referral Program for Department of Interior's Board of Land Appeals**

The U.S. Institute has established a partnership with the U.S. Department of Interior's Office of Hearings and Appeals and DOI's Collaborative Action and Dispute Resolution Office (CADR) to assist in building the capacity for, and use of, alternative dispute resolution and environmental conflict resolution within the Interior Board of Land Appeals (IBLA). This two-and-a-half-year project involves the development of an ADR referral system that starts with a practical and affordable diagnostic screening of administrative appeals to public land decisions rendered by DOI bureaus and offices. The cases entering the IBLA Pilot ADR Referral Program will be evaluated, and lessons learned will be included in final design and development of the pilot.
- **Native Dispute Resolution Network**

In January 2003, the U.S. Institute began development of a Native Dispute Resolution Network to assist parties involved in environmental, natural resources or public/trust lands issues in which

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<sup>6</sup> Program development and dispute system design services include assistance with planning, developing, designing, implementing, evaluating, and/or refining federal ECR programs, systems for handling administrative disputes, or approaches for managing environmental decision making (e.g., with NEPA processes).

American Indians, Alaska Natives, Native Hawaiians and federal agencies are primary parties. The Network will provide a centralized, broadly accessible and valued referral system of dispute resolution practitioners who have specialized knowledge and experience working with Native peoples. Its primary objectives are: to broaden the diversity of the field and promote information exchange among ADR practitioners; to encourage the use of alternative dispute resolution and agreement seeking processes in matters where appropriate that involve Native communities; to share skills and expertise among Native and non-Native conflict resolution practitioners; and to improve the ability of all parties to engage effectively in ADR processes. Key elements for inclusion in the Network have been established and the initial process to identify American Indians, Alaska Natives, Native Hawaiians and others with tribal working experience is underway. Although still in the development phase, the Network has already been used to provide project referrals. The FY 2004 referrals included the following: Consultation Facilitation/Education Program (National), Inter-Tribal Fund Expenditure Mediation (OK) and the Tribal Leadership Dispute System Design (OK).

#### Service Agreements

During 2004, the U.S. Institute had 13 service agreements and memoranda of understanding in place with other agencies. The U.S. Institute was striving to have 15 instruments in place in FY 2004. The U.S. Institute is actively working on 3 additional agreements that were not secured as of the end of the year.

The FY 2004 funded service agreements and memoranda of understanding included the following:

FY 2004 Service Agreements and Memoranda of Understanding	
1.	Department of Agriculture - Forest Service
2.	Department of Agriculture - Forest Service - Collaborative Forest Restoration Program
3.	Department of the Interior Office of Collaborative Action and Dispute Resolution
4.	Office of Hearings and Appeals
5.	Bureau of Land Management - Arizona
6.	Bureau of Land Management - Montana/Dakotas State
7.	Bureau of Land Management - Oregon
8.	Fish and Wildlife Service
9.	National Park Service
10.	Department of the Navy
11.	Environmental Protection Agency - Conflict Prevention and Resolution Center

12.	National Oceanic and Atmospheric Administration Fisheries -Northwest
13.	Department of Transportation - Federal Highway Administration

Activities, supporting objectives, and performance measures	Summary Goals and Actual Performance
<b>Build Capacity at a Stakeholder Level</b> – <i>Increase the capacity of process participants and others involved in environmental disputes to more effectively engage in ECR.</i>	
As a result of informal education and experience of stakeholders in mediation and facilitation processes managed by the U.S. Institute, in 85% of cases, stakeholders report an increased capacity to manage and resolve future challenges/conflicts (i.e. participants' experience in the process has made them more effective problem-solvers).	FY 2003 Actual: 82% FY 2004 Goal: 85% FY 2004 Actual: 85%
In 85% of formal training sessions provided by U.S. Institute staff or contractors, the participants report they gained usable knowledge and skills to assist them more effectively engage in and use ECR.	FY 2003 Actual: 94% FY 2004 Goal: 85% FY 2004 Actual: 100%

During FY 2004, the U.S. Institute achieved its goal by ensuring that in 85% of mediation and facilitation processes, the stakeholders reported an increased capacity to manage and resolve future challenges/conflicts. The U.S. Institute exceeded its goal by ensuring that in 100% of formal training sessions provided by the U.S. Institute staff or contractors, the participants reported they have gained usable knowledge or skills to assist them more effectively engage in and use ECR.

During FY 2004, the U.S. Institute was involved in 42 training/workshop/capacity building initiatives (Appendix A). The following selected projects illustrate the diverse nature and significance of current capacity building work being conducted through the U.S. Institute.

- FHWA / USIECR Collaborative Problem Solving Interagency Workshops  
The U.S. Institute has continued to assist the Federal Highway Administration's Environmental Streamlining and Stewardship Program with conflict management and dispute system design services. As a follow-up to the development of a Guidance Document on managing conflict in the transportation project review process, *Collaborative Problem Solving: Better and Streamlined Outcomes for All*, 11 regionally customized workshops were conducted to strengthen federal and state agencies' efforts to successfully meet agency coordination and cooperation mandates of TEA-21, Section 1309: *Environmental Streamlining* and Executive Order 13274: *Environmental Stewardship and Transportation Infrastructure Project Reviews*. The facilitated workshops, entitled "Improving Transportation

Projects Development and Environmental Reviews Through Collaborative Problem Solving,” promote an understanding and use of interest-based negotiation principles, collaborative problem solving techniques, and dispute resolution methods by transportation and environmental agencies in the project review process under NEPA. One workshop was conducted in each of the 10 federal regions (and two in one region). During the first half of FY2004, the remaining six of the eleven workshops were delivered (TX, NY, NE, GA, MD, TN). Discussions were initiated with several states to provide similar workshops featuring state-specific topics in the coming months.

- **Government-to-Government Consultation Workshops**  
On August 17-18, 2004 the Department of the Interior Office of Collaborative Action and Dispute Resolution (CADR), the U.S. Institute for Environmental Conflict Resolution (U.S. Institute) and the Council on Environmental Quality co-sponsored a workshop entitled: “Beginning the Dialogue: Government-to-Government Consultation, Coordinating the Lessons Learned and Looking to the Future,” in Washington, DC. This workshop is the outgrowth of many discussions with individuals in various federal agencies who have expressed a desire for information about what other agencies are doing in the area of government-to-government consultations with tribes. The workshop focused on the current status of government-to-government consultation from both tribal and federal perspectives. Several tribal leaders discussed their views on what works and what does not in present consultation practices. On the federal side, representatives from federal agencies that have either recently reviewed their government-to-government consultation policies or that are working on their policies shared their experiences and the lessons learned in that process. Over 60 people from 13 different agencies attended including people working in the area of government-to-government consultation and those in the conflict management and prevention arena. Several products are forthcoming from this workshop, including a web page hosted by DOI-CADR that collects in one place, information about the Native programs of the various federal agencies, including agency consultation policies and guidelines. Additional products include information about training opportunities in government-to-government consultation and a series of on-going brown-bags for improving agency coordination in the course of government-to-government consultation.

**Strategic Goal 5: Provide leadership within the federal government to improve environmental decision-making and policies through ECR.**

The U.S. Institute is engaged in activities aimed at improving environmental policy development and application through increased use of collaborative problem solving and decision-making.

Key activity, supporting objective, and performance measure	Summary Goal and Actual Performance
<b>Establish Principles for Collaborative Problem-Solving and ECR</b> – <i>Develop and disseminate principles for agency use of collaborative decision-making on policy environmental issues.</i>	
Create “Basic Principles for Agency Engagement in Collaborative Problem Solving and Environmental Conflict Resolution” for the Interagency ECR Initiative to Foster Collaborative Problem Solving and Environmental Conflict Resolution.	FY 2004 Goal: Develop basic principles FY 2004 Actual: Development of basic principles completed

The following summary details the nature and benefits of the Interagency ECR Initiative:

In August of 2003, Jim Connaughton, Chairman of the President’s Office of Environmental Quality contacted the U.S. Institute to discuss the development of a set of principles that could be used to improve environmental decision-making. The U.S. Institute was asked to plan and facilitate a meeting of top policy officials and their legal counsel to address how they can increase the use of more innovative approaches to collaborative problem solving and dispute resolution and to recognize programmatic initiatives already being undertaken by a number of departments.

In consultation with senior staff from a variety of federal departments engaged in environmental decision-making and conflict resolution, the U.S. Institute refined a set of basic principles and developed a framework for Chairman Connaughton to engage departmental leadership in a discussion on ways to more systematically prevent and reduce environmental conflict. In June, the U.S. Institute facilitated a meeting hosted by Chairman Connaughton with top policy officials and legal counsel from 15 federal departments and agencies who are actively engaged in environmental issues.

The leadership meeting provided an opportunity to review administration priorities, learn from departmental initiatives already underway, and discuss the challenges associated with reducing environmental conflicts and improving environmental decision-making. The meeting included case presentations as well as an opportunity for less structured, open discussion.

At some future date, consideration will be given to broadening the attendance and engaging additional departments, other levels of governments, tribal governments and private sector entities.

Key activity, supporting objective, and performance measure	Summary Goal and Actual Performance
<b>Provide leadership within the Federal Government to improve ECR practices and outcomes</b>	
Lead quarterly Federal ECR Roundtable discussions to provide federal agency alternative dispute resolution administrators and staff opportunities to review and critique past performance and share and discuss opportunities for innovative use and improved use of ECR.	FY 2003 Actual: 4 FY 2004 Goal: 4 FY 2004 Actual: 3

The U.S. Institute hosted three Federal ECR Roundtable meetings in D.C. at the White House Conference Center. Special presentations were made on ECR in Indian country, conflict assessments, and ECR evaluation. Limited staff resources made a fourth meeting impractical.

Key activities, supporting objectives, and performance measures	Summary Goals and Actual Performance
<b>Increase Collaborative Decision-Making re NEPA</b> – <i>Increase use of collaborative decision-making to improve implementation of Section 101 of the National Environmental Policy Act.</i>	
Disseminate recommendations of National Environmental Conflict Resolution Advisory Committee regarding use of collaborative processes to enhance achievement of policy objectives contained in NEPA Section 101.	FY 2004 Goal: Develop recommendations FY 2004 Actual: Recommendations developed

In 2002, a National ECR Advisory Committee was established by the U.S. Institute to help provide guidance on how to assist the federal government in implementing Section 101 of NEPA. NECRAC has established three subcommittees to focus on issues related to NEPA implementation.

The NEPA Section 101 Subcommittee has examined whether ECR helps to achieve the goals laid out in Section 101, either directly or indirectly, and common principles between the two. The subcommittee has compiled case studies exploring this interaction and surveyed other federal agencies about their approaches to the provisions in Section 101. A working group also explored the potential of collaborative resource monitoring.

The Capacity Building Subcommittee explored the barriers to increasing the appropriate use of ECR by federal agencies and considered ways in which the

U.S. Institute may help to overcome those barriers. One potential area of service by the U.S. Institute is the development and coordination of interagency training on collaboration and conflict resolution.

The Affected Communities Subcommittee addressed methods for effectively engaging local communities in collaborative processes and dispute resolution, by examining barriers and challenges to participation in these processes. The subcommittee is recommending various approaches to the U.S. Institute for issues arising in both urban and rural settings.

NECRAC held its third meeting in November 2003 and its fourth meeting in May 2004. The full committee will make its first report to the U.S. Institute by the end of FY 2004.

#### **Strategic Goal 6: Effective internal management and fiscal responsibility.**

Activity, supporting objective, and performance measure	Summary Goal and Actual Performance
<b>Processing of financial records</b> – <i>Improve computer systems and procedures.</i>	
Ensure 100% accuracy and timeliness of invoicing and payments to recipients of government funds.	FY 2003 Actual: NA FY 2004 Goal: 100% FY 2004 Actual: 98%

During FY 2004, the Foundation made improvements in its financial database and month-end closing process, including monthly reconciliation. By the end of the fiscal year, reconciliation was generally completed in less than five days. Accuracy was approximately 98% internally, and with the verification process provided by the General Services Administration, nearly 100% accuracy was achieved. By the end of the fiscal year, timeliness was approximately 98% of the internal goal and GSA achieved approximately the same for its part of transaction processing.

Given improvements to the financial database and processing in FY 2004, it is anticipated that 100% accuracy and timeliness goals should be achievable in FY 2005.

Activity, supporting objective, and performance measure	Summary Goal and Actual Performance
<b>Work environment</b> – <i>Provide regular and formal feedback to employees.</i>	



Ensure that all employees have individual performance goals and at least annual reviews.	FY 2003 Actual: NA FY 2004 Goal: All employees FY 2004 Actual: NA
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During FY 2004, the Foundation has transitioned the performance management system from a five-level program to a pass-fail program in order to simplify communication of goals and expectations. As of the end of FY 2004, performance reviews for the year had not yet occurred but were being scheduled, and performance planning for FY 2005 was under way. All employees are expected to have revised performance plans in accord with the new program early in FY 2005.

## **Independent Auditor's Reports and Financial Statements**

is available as a separate document.

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